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7 NAHUM AVENDANO-RUIZ,
8 Plaintiff,
9 v.
10 CITY OF SEBASTOPOL, et al.,
11 Defendants.

12 Case No. [15-cv-03371-RS](#)
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**ORDER DENYING DEFENDANTS'
MOTION FOR LEAVE TO FILE A
MOTION FOR RECONSIDERATION
AND CERTIFICATION FOR
INTERLOCUTORY REVIEW**

15 **I. INTRODUCTION**

16 Dissatisfied with the denial of their motion for summary judgment, defendants seek leave
17 to file a motion for reconsideration pursuant to Local Rule 7-9(b)(3). In the alternative, they
18 request certification for interlocutory review pursuant to 28 U.S.C. § 1292(b). Defendants have
19 done nothing more than improperly rehash old arguments and argue issues they raised for the first
20 time in reply. Accordingly, they have failed to demonstrate any manifest error warranting
21 reconsideration or extraordinary circumstances to justify an interlocutory appeal.

22 **II. RECONSIDERATION**

23 To qualify for leave to file such a motion, a party must demonstrate “[a] manifest failure
24 by the Court to consider material facts or dispositive legal arguments which were presented to the
25 Court before such interlocutory order.” Local Rule 7-9(b)(3). The rules are quite clear that “[n]o
26 motion for leave to file a motion for reconsideration may repeat any oral or written argument made
27 by the applying party in support of or in opposition to the interlocutory order which the party now
28 seeks to have reconsidered.” Local Rule 7-9(c). Parties that choose to ignore this admonition

1 "shall be subject to appropriate sanctions." *Id.*

2 Yet, defendants do just that: they contend the order includes legal errors and rehash the
3 arguments raised in their moving papers and reply briefs. In particular, defendants repeat their
4 argument that violation of a *criminal* traffic statute in the presence of a police officer justifies
5 vehicle impoundment. They assert the order fundamentally misapplied *Miranda v. Cornelius*, 429
6 F.3d 858, 864 (9th Cir. 2005), because that case did not involve a criminal traffic infraction. To
7 the contrary, defendants ignore and misapply *Miranda*'s explicit holding: "A driver's *arrest*, or
8 citation for a non-criminal traffic violation as in this case, is not relevant except insofar as it
9 affects the driver's ability to remove the vehicle from a location at which it jeopardizes the public
10 safety or is at risk of loss." *Id.* (emphasis added). The Ninth Circuit made its position on the
11 distinction between criminal and non-criminal statutes quite clear, albeit in dicta, but nonetheless
12 clearly instructive. *See Sheet Metal Workers Pension Trust of N. California v. Trayer Eng'g*
13 *Corp.*, No. 15-CV-04234-LB, 2016 WL 1745676, at *4 (N.D. Cal. May 3, 2016) ("Even if it were
14 technically *dicta*, though, it expresses clearly and forcefully the Ninth Circuit's view on the
15 matter.").

16 Defendants also argue that it was improper to rely on the reasoning of *Sandoval v. County*
17 *of Sonoma*, 72 F. Supp. 3d 997, 1000 (N.D. Cal. 2014), because the facts of *Sandoval* and this case
18 are different. This contention overlooks two fundamental points. First, the order acknowledged
19 the factual differences between the two cases, but nevertheless found the reasoning of the
20 *Sandoval* court persuasive. Second, the opinions of other district courts are persuasive, not
21 binding, and the *Sandoval* opinion was treated as such. Defendants may not like the fact this court
22 found *Sandoval*'s reasoning persuasive, but such disagreement alone is not the sort of manifest
23 error that warrants a motion for reconsideration.

24 Perhaps more troubling is the fact defendants contend the court manifestly failed to
25 consider a legal argument it raised for the first time in reply: that they could impound Avendano-
26 Ruiz's car as an "instrumentality of crime." Defendants' new argument was improper, and
27 therefore defendants' motion would have been denied even had they raised a dispositive legal

1 argument. Despite the fact Avendano-Ruiz has never had the opportunity to respond to this new
2 argument, the court read the authorities and was unpersuaded by defendants' argument. The
3 analysis was not essential to the outcome, and therefore defendants' current attempt to use analysis
4 of their improper argument to unlock a motion for reconsideration is not well taken. Accordingly,
5 defendants' motion for leave to file a motion for reconsideration is denied. While sanctions
6 certainly would be available under the applicable local rule, the court will refrain from imposing
7 them.

8 **III. CERTIFICATION FOR APPEAL**

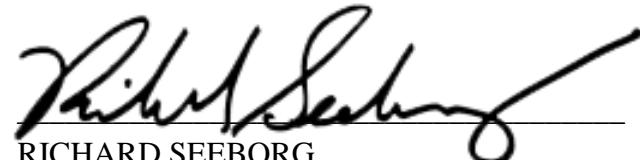
9 In the alternative, defendants request an amendment to the order authorizing an
10 interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Such a motion must conform to Local Rule
11 7-2, which defendants' motion does not, and it accordingly will be denied without prejudice.
12 Should defendants wish to request certification from this court, they must file and properly notice
13 the motion.

14 **IV. CONCLUSION**

15 Defendants' motions for leave to file a motion for reconsideration and for certification for
16 an interlocutory appeal are denied.

17 **IT IS SO ORDERED.**

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19 Dated: June 27, 2016



RICHARD SEEBORG
United States District Judge